

**ORDINANCE NO.**

**AN ORDINANCE OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO THE DEVELOPMENT AGREEMENT (DAA-09-05C: COCHRANE -BORELLO), A 244 UNIT SINGLE FAMILY RESIDENTIAL PROJECT LOCATED NORTH OF HALF ROAD, WEST OF COCHRANE ROAD, EAST OF PEET ROAD (APN 728-34-008), EXTENDING THE COMMENCEMENT OF CONTRUCTION DATES FOR FISCAL YEARS 2013-14, AND 2015-16.**

**THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AS FOLLOWS:**

**SECTION 1.** The City Council has adopted Resolution No. 4028 establishing a procedure for processing Development Agreements for projects receiving allotments through the Residential Development Control System, Title 18, Chapter 18.78 of the Municipal Code.

**SECTION 2.** The California Government Code Sections 65864 thru 65869.5 authorizes the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property.

**SECTION 3.** Planning Commission, pursuant to Chapter 18.78.125 of the Morgan Hill Municipal Code, has to date awarded 95 building allotments to applications MC-08-16, MC 09-04, MC 11-03 MC 12-07 for FYs 2010-11 thru 2014-15, MC 13-21: Cochrane-Borello, 25 building allotments for FY 2015-16 and 15 allotments to MC 14-12: Cochrane-Borello

**SECTION 4.** The City Council of the City of Morgan Hill found that, on the basis of the whole record before it (including the EIR and any comments received), that there is no substantial evidence that the project will have a significant effect on the environment and that the Environment Impact Report adopted by the City Council in January 2013, and the Planning Commission's independent judgment and analysis, and that the EIR was adopted prior to action taken to adopt the original project proposal. The custodian of the documents or other material which constitute the record shall be the Community Development Department.

**SECTION 5.** On March 27, 2013 the City Council adopted Ordinance No. 2065, N.S., which approved a Development Agreement which established 'commence construction' dates for the 244-unit project. Reference is hereby made to that certain Agreement on file in the office of the City Clerk of the City of Morgan Hill. The agreement signed by the City of Morgan Hill and the property owner(s) set forth in detail the development schedule, the types of homes, and the specific restrictions on the development of the subject property. Said Agreement herein above referred to shall be binding on all future owners and developers as well as the present owners of the lands, and any substantial change can be made only after further public hearings before the Planning Commission and the City Council of this City; and

**SECTION 6.** On August 5, 2015 the City Council adopted Ordinance No. 2161, N.S., which approved an amendment to the development agreement incorporating the commitments and adding to exhibit D the development schedule for the 15 allotments to MC 14-12: Cochrane-Borello project; and

**SECTION 7.** On June 30, 2014, 23, FY 2010-11 allocations expired due to lack of commencement.

**SECTION 8.** On June 30, 2015, 57, FY 2011-12 and FY 2014-15 allocations expired due to lack of commencement.

**SECTION 9.** Nine, 14 and six month extensions are currently requested for the fiscal year allocations awarded for FY 2013-14, FY 2015-16 and 2016-17, respectively.

**SECTION 10.** Pursuant to Section 18.78.125.G of the Municipal Code, the City Council may grant an Exception to Loss of Building Allotment (ELBA) if it finds that the cause for the lack of commencement was the City's failure to grant a building permit for the project due to an emergency situation as defined in Section 18.78.140, or extended delays in environmental review, permit delays not the result of developer inaction, or allocation appeals processing.

**SECTION 11.** On October 22, 2009, the City Council adopted Council Policy CP-09-02, establishing criteria by which to evaluate ELBA requests filed by developers; and in accordance with Policy CP-09-02, projects that have timely completed at least six of eight steps in the permitting process would be considered favorably for an extension because it demonstrates good faith effort by the developer in commencing and completing the project. The Council may also consider other circumstances unique to a project to support an extension of the building allocation provided the applicant provides sufficient evidence of the extraordinary or unique circumstances.

**SECTION 12.** The San Sebastian project has completed Steps 1, 2, 3 and 5, with steps 4 and 6 partially completed. A 12-month processing delay occurred due to the project's repeated inability to secure a development partner; and

**SECTION 13. CONDITIONAL EXTENSION.** The allocation extensions hereby granted are affective only if the Master Building Plan set is approved by August 1, 2016 and the final map for phase I (21-lots) of the San Sebastian project is recorded prior to October 31, 2016.

**SECTION 14. ADOPTION OF AMENDED DEVELOPMENT SCHEDULE, EXHIBIT D.** The City Council hereby approves the Development Agreement Amendment attached to this Ordinance as Exhibit A.

**SECTION 15.** The amended development schedule attached to this Ordinance hereby supersedes and replaces the amended development schedule approved under Ordinance No. 2161.

**SECTION 16.** The City Council hereby finds that the development agreement amendment approved by this ordinance is compatible with the goals, objectives, policies, and land uses designated by the General Plan of the City of Morgan Hill.

**SECTION 17. Severability.** If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

**SECTION 18. Effective Date; Publication.** This ordinance shall take effect thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

**THE FOREGOING ORDINANCE WAS INTRODUCED AT A MEETING OF THE CITY COUNCIL HELD ON THE 18<sup>th</sup> DAY OF MAY 2016, AND WAS FINALLY ADOPTED AT A MEETING OF THE CITY COUNCIL HELD ON THE \_\_\_ DAY OF \_\_\_\_\_ 2016, AND SAID ORDINANCE WAS DULY PASSED AND ADOPTED IN ACCORDANCE WITH LAW BY THE FOLLOWING VOTE:**

**AYES: COUNCILMEMBERS:**

**NOES: COUNCILMEMBERS:**

**ABSTAIN: COUNCILMEMBERS:**

**ABSENT: COUNCILMEMBERS:**

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
**IRMA TORREZ, City Clerk**

\_\_\_\_\_  
**STEVE TATE, Mayor**

**~ CERTIFICATION ~**

**I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA,** do hereby certify that the foregoing is a true and correct copy of Ordinance No. \_\_\_\_\_, New Series, adopted by the City Council of the City of Morgan Hill, California at its regular meeting held on the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

**WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.**

DATE: \_\_\_\_\_

\_\_\_\_\_  
**IRMA TORREZ, City Clerk**

**Exhibit D of the development agreement shall be amended as follows:**

**EXHIBIT D**

**DEVELOPMENT SCHEDULE MC 11-03/MC 13-21/MC 14-12: Cochrane-Borello  
Fiscal Year 2013-14 (15 allotments)/ Fiscal Year 2015-16 (25 allotments)/Fiscal Year 2016-17 (15 allotments)**

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<b>I.</b>	<b>SUBDIVISION AND ZONING APPLICATIONS</b> Applications Filed:		September 1, 2009
<b>II.</b>	<b>SITE REVIEW APPLICATION</b> Application Filed:		April 8, 2013
<b>III.</b>	<b>FINAL MAP SUBMITTAL</b> Map, Improvements Agreement and Bonds: FY 2013-14 – (15 units) FY 2015-16 – (25 units) FY 2016-17 – (15 units)		August 1, 2015 August 1, 2015 August 1, 2016
<b>IV.</b>	<b>BUILDING PERMIT SUBMITTAL</b> Submit plans to Building Division for plan check: FY 2013-14 – (15 units) FY 2015-16 – (25 units) FY 2016-17 – (15 units)		March 1, 2016 March 1, 2016 March 1, 2017
<b>V.</b>	<b>BUILDING PERMITS</b> Obtain Building Permits: FY 2013-14 – (15 units) FY 2015-16 – (25 units) FY 2016-17 – (15 units)	<b>October 31, 2017</b> <b>May 30, 2018</b>	<del>May 30, 2016</del> <del>May 30, 2016</del> May 30, 2017
<b>VI.</b>	<b>COMMENCE CONSTRUCTION</b> FY 2013-14 – (15 units) FY 2015-16 – (25 units) FY 2016-17 – (15 units)	<b>January 15, 2017*</b> <b>June 30, 2018*</b>	<del>June 30, 2016</del> <del>June 30, 2016</del> June 30, 2017

***\*The allocation extensions are affective only if the Master Building Plan set is approved by August 1, 2016 and the final map for phase I (21-lots) of the San Sebastian project is recorded prior to October 31, 2016.***

Failure to commence construction by the dates listed above, shall result in the loss of building allocations. In such event, the property owner must re-apply under the development allotment process outlined in Section 18.78.090 of the Municipal Code if development is still desired.

An exception to the loss of allocation may be granted by the City Council if the cause for the lack of commencement was the City's failure to grant a building permit for the project due to an emergency situation as defined in Section 18.78.140 or extended delays in environmental reviews, permit delays not the result of developer inactions, or allocation appeals processing.

If a portion of the project has been completed (physical commencement on at least 72 dwelling units and lot improvements have been installed according to the plans and specifications), the property owner may submit an application for reallocation of allotments. Distribution of new building allocations for partially completed project shall be subject to the policies and procedures in place at the time the reallocation is requested.